

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 08-1616

Pacifique Gahamanyi,

Petitioner,

v.

Eric H. Holder, Jr.,¹ Attorney General
of the United States,

Respondent.

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Petition for Review of
an Order of the Board
of Immigration Appeals.

[UNPUBLISHED]

Submitted: October 8, 2009
Filed: October 14, 2009

Before WOLLMAN, RILEY, and SMITH, Circuit Judges.

PER CURIAM.

Pacifique Gahamanyi, a native of Burundi and citizen of Rwanda, petitions for review of an order of the Board of Immigration Appeals (BIA) denying his motion to reconsider an earlier decision,² denying a waiver of inadmissibility under 8 U.S.C.

¹Eric H. Holder, Jr., has been appointed to serve as Attorney General of the United States, and is substituted as respondent pursuant to Federal Rule of Appellate Procedure 43(c).

²The BIA's earlier decision denying a waiver of inadmissibility under 8 U.S.C. § 1159(c), and finding Gahamanyi ineligible to adjust his status under 8 U.S.C.

§ 1182(h), and finding him ineligible for adjustment of status under 8 U.S.C. § 1255. We lack jurisdiction to review the BIA's denial of a section 1182(h) waiver of inadmissibility, see 8 U.S.C. § 1252(a)(2)(B)(i) ("no court shall have jurisdiction to review any judgment regarding the granting of relief under section 1182(h)"), and, absent a waiver of inadmissibility, Gahamanyi is statutorily ineligible to adjust his status under section 1255, see 8 U.S.C. § 1255 (listing requirements for adjustment of status); cf. Pinos-Gonzalez v. Mukasey, 519 F.3d 436, 439 (8th Cir. 2008) (appeals courts not precluded from reviewing nondiscretionary decisions that pertain to statutory eligibility for discretionary relief). As to the denial of the motion to reconsider, we find the BIA did not abuse its discretion in denying the motion as untimely. See 8 U.S.C. § 1229a(c)(6) (motion to reconsider must be filed within 30 days of order); Ghasemimehr v. Gonzales, 427 F.3d 1160, 1162-63 (8th Cir. 2005) (per curiam) (BIA did not abuse its discretion in denying untimely motion to reopen).

Accordingly, we deny the petition.

§ 1159, is not properly before us. See 8 U.S.C. § 1252(b)(1) (petition for review must be filed no later than 30 days of final order of removal); Strato v. Ashcroft, 388 F.3d 651, 654-55 (8th Cir. 2004) (motion to reconsider does not toll time for appeal of underlying removal order).